FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/153227

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Office of Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on January 09, 2014, at Waukesha, Wisconsin. The record was held open 10 days to allow for the submittal of new information to the OIG for review; the OIG provided its response on January 16, 2014.

The issue for determination is whether the OIG correctly denied petitioner's prior authorization (PA) request because it did not support the medical necessity for the requested occupational therapy (OT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By written submittal of: Mary Chucka, OTR
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County. At the time of the PA request he was 5 years old and certified as eligible for MA.
2. Petitioner is diagnosed with Attention Deficit with Hyperactivity and lack of coordination.
3. On August 2, 2013 the petitioner's private OT, [redacted], submitted a PA request to the OIG to request OT for petitioner.
4. On October 3, 2013 the OIG issued a notice to petitioner denying the PA request because it concluded that the OT regimen requested was not sufficiently documented to be medically necessary under Wisconsin's MA rules.

DISCUSSION

OT is covered by MA under Wis. Adm. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In reviewing a PA request the OIG must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). Section DHS 101.03(96m) defines medical necessity in the following relevant provisions:

> "Medically necessary" means a medical assistance service under ch. DHS 107 that is:
>
> (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
>
> (b) Meets the following standards:
> …
> 8. With respect to prior authorization of service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary services which is reasonably accessible to the recipient.
>
> 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The OIG argues that the information submitted by the provider did not show why the requested OT is "required to prevent, identify or treat a recipient's illness, injury, or disability." The agency wanted the provider to provide information that identified what the petitioner is able to do and not do effectively and independently, and more information on the "problem areas" that the provider was seeking to treat. In other words, the OIG wanted an assessment of petitioner's functional tasks to determine what particular problem or limitation interferes with task performance. An objective measurement of these problem areas was also requested so that it could be determined that these problems were the basis for the lack of functional performance. The OIG argues that it needs such information in order to determine that a plan for OT therapy was required to address those deficits.

The provider described petitioner as demonstrating good orthopedic status and independent mobility skills; is performing fine motor, self-help and play skills which are below the average of other children his age; having decreased postural control, balance, bilateral upper extremity coordination; visual motor

integration and grasping; having poor attention, sequencing, problem solving and praxis; and having a definite dysfunction in overall sensory processing. The problem the OIG identifies is that the provider does not show objective measurements of those impairments so that any changes could be identified, measured, or even compared to show improvement as a result of the OT provided. Terms such as "decreased" or "poor" tell us that there are limitations, and that is not in dispute, however they do not quantify the limitation. This is why a baseline quantitative assessment is performed and subsequent assessments on the same or similar basis are necessary to demonstrate "progress". This also would serve to show how *this* OT provider is benefitting petitioner should a duplication of services issue arise. Without clinical information to identify petitioner's gains or losses, the PA request is not supported.

Finally, petitioner's mother, who is an excellent advocate for her son, anecdotally described her son's limitations with respect to poor attention, sensory processing and his self-care/safety issues. She also pointed out that the evaluation showed petitioner having a grasping age equivalence of 37 months and that this is a measure that shows his difficulty with buttons. However, that still does not provide us with the comprehensive information needed to understand if his grasping limitations justify the need for therapy, i.e., why does he show the ability to perform some fine motor tasks and why wouldn't his IEP identify it as a limitation? Petitioner is essentially at the mercy of the provider who is required to justify the requested services.

Based upon my review of the record in this case, I must agree with the OIG's decision to deny the PA. The basic assertion of the OIG has been the lack of evidence that would justify the medical need for continued OT services in a clinical setting as requested. I agree that that information has not yet been presented. Therefore, I must conclude the requested OT in this case is not covered by the MA program. The OIG was therefore unable to approve the requested service.

I note for petitioner's benefit that this is not a bar to submitting another PA request for OT. The requesting provider will need to provide the basic documentation to support another request, however.

While petitioner may believe this to be unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's PA request for OT.

THEREFORE, it is ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of January, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 23, 2014.

Division of Health Care Access and Accountability